

CAROLINA INDIAN VOICE

Published each Thursday in Pembroke, N.C.

"Building Communicative Bridges In A Tri-Racial Setting"

Volume 27, Number 9

Thursday, March 16, 2000

25¢

Superior Court Judge upholds NC Commission of Indian Affairs decision of no state recognition for Occaneechi Band of the Saponi Nation

In a February 16, 2000 decision filed in Orange County Superior Court, Judge Henry V. Barnette, Jr. upheld the North Carolina Commission of Indian Affairs' decision that the group called the "Occaneechi Band of the Saponi Nation" (OBSN) not be granted official tribal recognition by the state. In his order to affirm the Commission's decision not to recognize the petitioning group, Judge Barnette ruled, "It must be understood that the Respondent's (Commission's) statutory function in determining tribal recognition is that of a 'Gatekeeper' and as long as they perform this function reasonably and fairly then the judicial reviewing authority is not justified in reversing." Barnette further wrote the merits of this decision as follows:

There are three decisional principles that need to be emphasized:

a. It is the statutory duty of the Respondent (Commission) to promulgate rules establishing appropriate procedures for legal recognition of Indian tribes by the State. This they have done and these rules are set out in the North Carolina Administrative Code. The principle to be applied is that the Commission's interpretation of these rules, if the interpretation is not arbitrary or capricious, should be given deference on judicial review.

b. There are two types of facts that can be found by a fact finder: (1) primary facts which are found directly from the evidence; and (2) ultimate facts which are usually conclusions (not legal but factual) which are found from the primary facts. It has been pointed out that the Commission was in agreement with 93% of the facts found by the ALJ; which is probably true. The other 7% where there is disagreement, represent differences as to the ultimate facts (conclusions). Basically the Respondent (Commission) and the ALJ differ as to whether the Petitioner has met its burden of persuasion, i.e. the ALJ is satisfied; but the Commission is not. Since the question whether the burden of persuasion is satisfied is actually the finding of an ultimate fact, it is the fact finder's call.

c. The ALJ from time to time in her decision makes the statement: "There is no statute or rule which requires..." Then there follows that purports to be a legal conclusion. This is not legal conclusion in any way of the context in which the clause is used, but merely a finding of an ultimate fact by the ALJ. Therefore, the Respondent (Commission) can disagree. To express this another way: "Although there is no statute or rule which expressly requires this, we (the Commission) do require this of the Petitioners in order to meet their burden of persuasion." The Commission in its fact finding capacity can require this and apparently this is what they did.

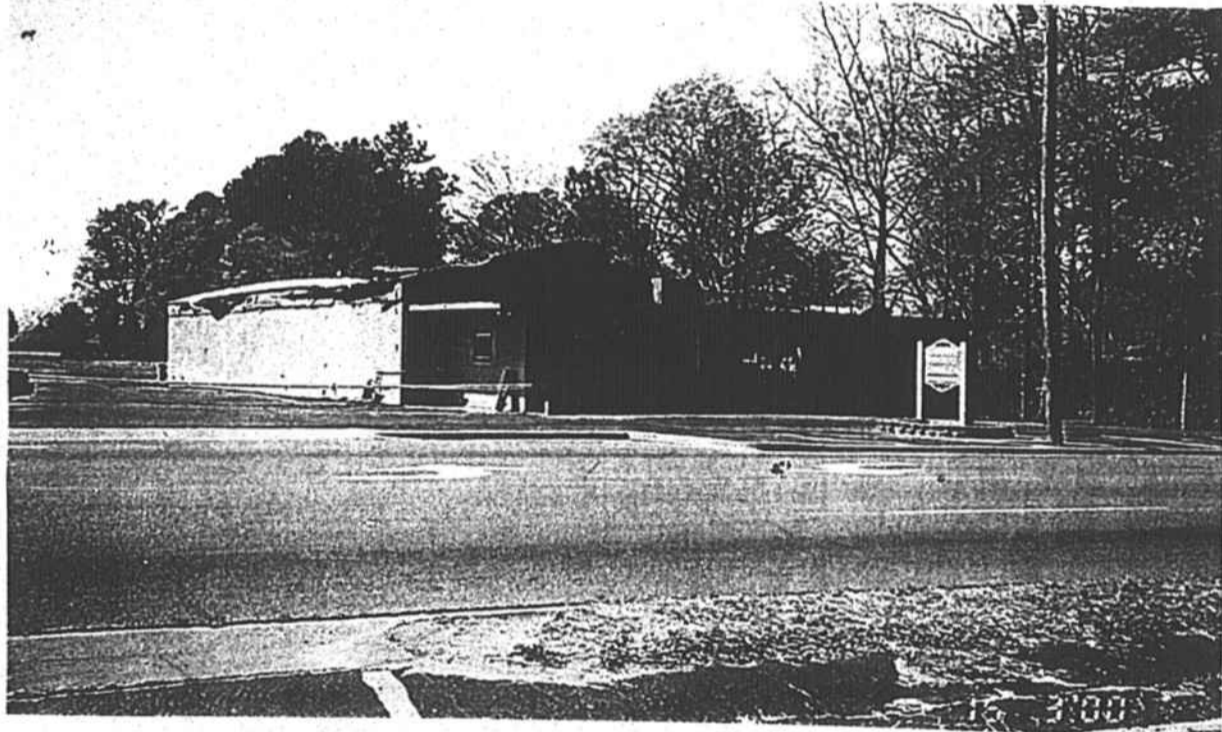
In concurring that the commission is entitled to its opinion, Judge Barnette wrote, "I would agree that the Commission has set the bar pretty high by requiring the Petitioners to not only prove their Indian-ness (sic) back two hundred years but also requiring that they link themselves to an Indian tribe or confederacy that existed two hundred years ago. Considering the Commission's statutory duty and the ultimate state interests, this is not unreasonable."

Paul Brooks, a Lumbee Indian, and Chairman of the North Carolina Commission of Indian Affairs, said, "As Chairman of the North Carolina Commission of Indian Affairs, I continue to support the decision not to recognize this group as an Indian tribe. I further commend the legal system in Orange County and the authority exercised by Judge Henry Barnette in his ruling acknowledging the legislative authority and objectivity exercised by the Indian Commission in carrying out its mandate on behalf of the legitimate Indian tribes in the state. The North Carolina General Assembly in 1971 and 1976 clearly expressed its intentions that the Indian tribal leaders have the rightful authority to say who North Carolina's legitimate tribes are, and through their representatives to the Commission of Indian Affairs, this has happened. Judge Barnette's ruling affirms this. "It's akin to the federal recognition process." Brooks continued, "in that the

federal government has a specific agency—the Bureau of Indian Affairs in the U.S. Department of Interior—that is the primary agency to handle federal government and tribal government affairs, including federal government recognition of tribal status. In North Carolina we have the State Commission of Indian Affairs that is authorized to grant state government recognition of tribal status."

The appeal process began in January 1996 with the OBSN's filing of a Petition for a Contested Case Hearing with the North Carolina Office of Administrative Hearings. This came one month after the North Carolina Commission of Indian Affairs turned the group down for official state recognition as an Indian tribe in North Carolina. In its 14 to 1 decision in December 1995, the full commission concurred with the findings of the Special Committee on Recognition that the petition did not meet five of the eight criteria under Section .0209(a) as required by Section .0209(c) of the recognition procedures. Throughout the remainder of 1996 depositions were taken in preparation for the administrative hearing the petitioner requested and the administrative law judge ordered the case to mediation. As part of the mediation process, additional petition materials and documents were submitted to the commission, and the commission's mediation team determined that one additional criterion had been met by the petitioning group. By a 9 to 1 majority vote in December 1997 the full commission upheld the recommendation of the Recognition Committee/Mediation Team to deny state recognition to the "Occaneechi Band of Saponi Nation," citing the group's failure to satisfy recognition criteria. In April 1998 an impasse was declared in the mediation and the ALJ issued an order for the contested case hearing to resume in July. After hearing the case for eight days in July, in December 1998 Administrative Law Judge Delores Smith issued a decision recommending that the commission grant tribal recognition to the petitioners. In July 1999 the commission issued its Final Agency Decision, which was deliberated and

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Eastside Medical Clinic destroyed by fire

Eastside Medical Clinic, offices of Dr. Michael Brooks, West Third Street, Pembroke, was destroyed by fire early Wednesday morning. Origins of the fire are unknown. The Pembroke Police Department is investigating the fire. Dr. Brooks, affiliated with Southeastern Regional Medical Center, had only in recent months relocated to Pembroke.

The newly-renovated Eastside Medical Clinic once housed Pembroke Skating Ring in the early 1960s, and other businesses. The roof as well as the inside of the building was totally destroyed. This photo shows what was left of the clinic after the fire was contained late Wednesday.

Auditions For Strike At The Wind 2000

Strike at the Wind-Open auditions will be held for all roles on March 25 & 26 at the Adolph L. Dial Amphitheater for the 2000 production season. Hours of auditions will be from 10 am to 5 pm on Saturday and 1 pm to 5 pm on Sunday. It is requested by the Director for those that have never been a part of the drama to bring a resume and a photograph.

Gary Locklear named first Native American Chief District Court Judge for Robeson



Chief Justice Henry E. Frye of the N.C. Supreme Court appointed Gary L. Locklear chief District Court Judge for Robeson County. Locklear, the first Native American in the state to be named chief judge, has been a District Court Judge since 1988.

"There is no more important task given to a public official than the proper administration of justice," Frye said. "Judge Locklear has carried out his responsibilities efficiently and effectively with respect toward those who come before him in court. I have confidence in his ability to serve as chief District Court judge."

Locklear, a native of Pembroke,

graduated from the University of North Carolina at Chapel Hill with a Juris Doctor in May 1979. He received his masters in business and economics from Appalachian State University and his bachelor of science degree in business from Pembroke State University in 1970.

Locklear was an assistant district attorney in Robeson County from 1979 to 1982. He entered private practice for six years, then was elected judge in Robeson County in 1988.

Locklear and his wife, Molly, have two children, Brooke, a junior at the University of North Carolina at Chapel Hill, and Brad, a freshman at Dartmouth College in New Hampshire.

"Honor Ride" Visits Marlboro

by Gray Bostick

A national effort to solicit support for creation of a federally established "Native American Day" has passed through a portion of Marlboro County.

Sponsored by Native Americans for the Pursuit of Honor, participants in the "Honor Ride", a horseback ride from Pembroke, N.C. to Greenville, Ohio, recently spent the first night of their journey just outside McColl.

Created to draw attention to the sacrifices made by Native Americans throughout the history

of the United States, the "Honor Ride" is the culmination of a series of dreams for primary rider Martin Yellowhawk. Feeling drawn to his ancestry, Yellowhawk originally planned to ride from his home in Red Springs, N.C. to an unknown destination in Indiana.

Discussing his dream with tribal elders, the destination was later changed to the more appropriate Greenville, Ohio, location of the Treaty Memorial, significant for its designation as the site where nine treaties were signed.

It was also determined that the primary goal of the ride would be to encourage tribal unity in the national effort to restore the honor and dignity of Native Americans in the spirit of the Great Chief Tecumseh. In fact, the date requested for the national day of honor, October 5, is the date of Tecumseh's death in 1813.

During his ride, Yellowhawk is riding "Patrick Stronghorse", a registered Arabian purchased exclusively for the "Honor Ride" and chosen for his proud stance, exemplifying the importance of the journey he is participating in.

Tera Silver Dove, who has been instrumental in arranging all aspects of the ride, even aiding in

the procurement of "Patrick Stronghorse", has joined Yellowhawk on his adventure, riding an Arabian named "Kowi", which is Cherokee for "coffee".

Other riders are also planning to join Yellowhawk and Silver Dove for portions of their ride, as was the case in Marlboro until inclement weather the evening of the first day served to limit that opportunity.

Nevertheless, approximately ten riders arrived in Marlboro County March 4 as, coincidentally, heavy rains pounded the area. Perhaps appropriately for these riders seeking to counter the hardships brought on by the loss of land and legacy.

For they know that their journey will be long and difficult until its end in Ohio late next month where they will meet with others for formal presentation of a petition requesting the federal holiday.

They, nor Tecumseh, would expect anything less.

For more information about or updates on the "Honor Ride", or to sign a petition supporting establishment of a "Native American Day", visit the Native Americans United for the Pursuit of Honor website at www.honorride.com.

Census 2000 and the importance to Native Americans

The United States Constitution mandates a census every 10 years to determine how many seats each state will have in the US House of Representatives. The census count is used to determine funding allocations for governmental agencies, including tribal governments. The census numbers are also used to determine where schools, government facilities, businesses and industries will be located over the next ten years.

About a week before Census Day - April 1, 2000 - most households will receive a questionnaire by mail. Census takers will deliver forms to the remaining households. The Census 2000 questionnaire that most people will get will ask about seven subjects: name, sex, age, relationship, Hispanic origin, race and housing tenure.

Greg Richardson, Executive Director of the NC Commission of Indian Affairs and member of the Year 2000 Census Advisory Committee on American Indians and Alaska Natives, urges all American Indians in the state to fill out their census forms and be counted. If you identify as an American Indian, answer the race question only as American Indian. The census form will allow you to check more than one race category. Therefore, you could be counted as part American Indian and part of numerous other races. However, if you check the other races, there is no guarantee that you

will be counted as American Indian. Mr. Richardson states, "Please do not leave this space blank, or the Census Bureau may have to guess your race, thus causing an undercount of American Indians." If you live in a mixed household, the American Indian spouse should be listed as Person Number 1 - head of household - to qualify as an American Indian household. Having a tribal enrollment number does not mean you are automatically counted as an Indian for census purposes. You must identify yourself as American Indian in the space provided. If you are American Indian, identify as Indian whether you are enrolled or not, check American Indian only on the race question and name your tribe. Please be sure to use the correct spelling of your tribal name. In the past there were problems due to the misspelling of tribal names.

It is also important for American Indians to name the tribe they are affiliated with. One should not leave the tribe section blank, even if you are not an enrolled member in the tribe. Naming one's tribe will help ensure that you are counted as American Indian and affiliated with a specific Indian tribe. This will also help the tribe and local agencies that serve American Indians isolate census data and funding opportunities for Indian programs in specific communities. It is important to put your primary tribe

first. For example, if you identify with the Lumbee tribe but have Coharie ancestry, your primary tribe would most likely be Lumbee. Write in the name of your tribe even if your tribe is not federally recognized. The legal status of the tribe does not matter. Be sure to fill in the space with the correct spelling of your tribe.

One should answer the Hispanic origin question also. If you are American Indian, even if you have a Hispanic surname or are of Hispanic origin, answer the question no. In the past, American Indians who answered yes to the Hispanic origin question were not counted as Indian, but as Hispanic. If you have a Hispanic surname, or live in a Hispanic neighborhood the Census Bureau might count you and your family as Hispanic.

Please fill out your form and return it as soon as you can. The due date is April 1, 2000. If you do not return your form by the due date, or are not able to fill out your form, a census worker will come door to door to obtain the information. If you do not wish to be bothered at home, please return the form before the due date. If you are not home or do not answer the door, the census worker may ask your neighbors to answer questions about you, including your race. This may result in incorrect data, and you may not be counted as American Indian.